PATENT

Attorney Docket No. SIC-04-021

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re reissue application of:
KANJI KIRIMOTO, et al
Application No.: 10/826,173
Filed: April 16, 2004
For: CABLE DISK BRAKE

Examiner: Thomas J. Williams
Art Unit: 3657

REQUEST FOR REHEARING
37 C.F.R. §41.52

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Commissioner:

This is a request for rehearing of the Board's Decision dated August 17, 2009. The request for rehearing is limited to claims 72 and 73 on appeal.

At page 29 of the Decision, the Board stated:

> "The arguments with respect to claims 72-73 appear to be the same as the argument with respect to claim 37. Appeal Brief, pages 16-17.
>
> "The decision of the Examiner rejecting claims 72-73 under §103 is *affirmed*."

Claim 72 adds a time feature that is not recited in claim 37. More specifically, claim 72 recites "wherein the cable support extends from a surface of the caliper housing and is not adjustable *at any time* relative to the surface of the caliper housing." The Appellant believes that the Board may have overlooked this difference in language between claim 37 and claim 72.

Even if it could be said that the "frozen in time" interpretation of the term "adjustable" in claim 37 is proper and is satisfied by considering only the state of the Le Deit, et al structure as it appears in the drawings, it is believed that such a "frozen in time" interpretation is improper when

the phrase "at any time" is added to the word "adjustable" as recited in claim 72. As argued at page 16 of the Appeal Brief, it cannot be maintained that the Le Deit, et al cable support is not adjustable simply because it is screwed together as shown in the drawings of the patent. It is submitted that, unlike claim 37, even the *initial adjustment* of the Le Deit, et al cable support set forth at col. 5:30-37 of Le Deit, et al removes the Le Deit, et al device from the language of claim 72. Furthermore, the time feature recited in claim 72 also clearly precludes even the *possibility* of any type of adjustment in the future (such as the possible adjustments referenced at page 16 of the appeal brief), and this, too, removes the Le Deit, et al device from the language of claim 72 .

Claim 73 recites "wherein the cable support extends from a surface of the caliper housing and is not *removable* relative to the surface of the caliper housing." It is possible that the Board may have overlooked the fact that claim 73 recites "removable," not "adjustable." It is believed that *Dorel Juvenile Group, Inc. v. Graco Children's Products, Inc.*, 429 F.3d 1043, 77 USPQ.2d 1090 (Fed.Cir. 2005), initially cited at page 13 and later relied upon at page 17 of the Appeal Brief when discussing claim 73, is even more pertinent to claim 73, since both *Dorel* and claim 73 are directed to the concept of a *removable* structure. As noted at the bottom of page 13 of the Appeal Brief, the Court of Appeals for the Federal Circuit expressly rejected the argument that two parts screwed together are not "removably attached" to each other. Le Deit, et al's bracing piece (44) may be removed simply by removing screw (60), thereby removing the Le Deit, et al device from the language of claim 73.

Accordingly, it is requested that the Board reconsider the Board's holdings with respect to claims 72 and 73 and reverse the examiner's rejection of claims 72 and 73 based on §103. If the Board does reverse the rejection of claims 72 and 73 based on §103, then the Appellant also requests that the Board reverse the Examiner's rejection of claims 72 and 73 based on the recapture rule either pursuant to the reasoning provided in Appellant's Brief, supplemented by Appellant's Response to Request for Additional Briefing, or pursuant to *Ex Parte Bradshaw* cited in the Board's Decision.

Respectfully submitted,

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